

FILED JUL 02 2008 USDC-OR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROD M. TYLE,

Plaintiff,

Civil No. 07-CV-284-AC

v.

ORDER

BERGELECTRIC CORP., a foreign
business corporation,

Defendant.

HAGGERTY, Chief Judge:

Magistrate Judge Acosta issued a Findings and Recommendation [53] in this action, recommending that defendant's motion for summary judgment be granted. Plaintiff filed objections to the Findings and Recommendation. On June 24, 2008, the matter was referred to this court. When a party objects to any portion of a Findings and Recommendation, the district

court must conduct a *de novo* review of that Findings and Recommendation. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

In the Findings and Recommendation, Judge Acosta outlined two independent reasons for granting defendant's summary judgment motion: plaintiff's failure to (a) engage in the interactive process or (b) prove he was an "individual with a disability," as required by the relevant state and federal statutes. 42 U.S.C. § 12112(a), O.R.S. § 659A.100(1).

Roughly a page long, plaintiff's Objections to Rulings and Findings [60] is devoid of legal argument. At most, it sets forth facts that potentially undermine the conclusions of the Findings and Recommendation. For example, plaintiff asserts that he has been diagnosed with multiple sclerosis. Objections to Rulings and Findings, p. 1 ("Dr. Greg Zarelli . . . says I [] probably have had MS for 10 years."). In doing so, however, plaintiff relies on evidence that was either not presented to the court or never properly authenticated. Findings and Recommendation, p. 17 ("Tyle has not submitted competent and admissible evidence that establishes he has [multiple sclerosis] and that the condition existed at the time of the events which gave rise to his lawsuit, a lack of evidence that precludes Tyle from demonstrating the existence of a disability."). Since this evidence was not properly before the Magistrate, this court will not consider it on review.

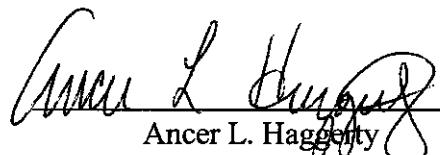
The court has given the file of this case a *de novo* review, and has also carefully evaluated the Findings and Recommendation, the objections, and the entire Record. The Judge's reasoning and recommendations are sound, correct, and entitled to adoption.

CONCLUSION

This court adopts the Findings and Recommendation [53]. Accordingly, plaintiff's Motion to Strike Declarations [46] is denied and defendant's Motion for Summary Judgment [25] is granted. This case is DISMISSED with prejudice.

IT IS SO ORDERED.

Dated this 1 day of July, 2008.



Ander L. Haggerty
United States District Judge